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1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA, New York, N.Y.

4 v. 18 Cr. 30 (PAC)

5 PAUL VAN MANEN and KENNETH
CHARLTON,

6 Defendants.

7 -----x

Trial

8 May 6, 2019
10:20 a.m.

9 Before:

10 HON. PAUL A. CROTTY,

11 District Judge
- and a Jury-

12 APPEARANCES

13 GEOFFREY S. BERMAN

United States Attorney for the
Southern District of New York

14 BY: JESSICA K. FENDER

RYAN B. FINKEL

15 CATHERINE E. GHOSH

Assistant United States Attorneys

16 QUIJANO & ENNIS, P.C.

Attorney for Defendant Van Manen

17 BY: PETER E. QUIJANO

18 ANNA N. SIDERIS

19 O'NEILL & HASSEN

Attorney for Defendant Charlton

20 BY: GRAINNE E. O'NEILL

21 THE LAW OFFICE OF CARLOS M. SANTIAGO

Attorney for Defendant Charlton

22 BY: CARLOS M. SANTIAGO, JR.

23 ALSO PRESENT:

24 MADISON DUNBAR, Paralegal, U.S. Attorney's Office

25 WILLIAM COLEMAN, Paralegal, U.S. Attorney's Office

LILY LAU, Paralegal, Quijano & Ennis

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(In open court)

THE COURT: Good morning. The jury is just about ready, but I thought I would -- we received a number of motions over the weekend. I'm going to rule on those motions now.

With respect to the government's motion to redact the racial slurs in CW1's text message, that motion is granted.

The request to modify the protective order is denied.

With respect to character evidence for Mr. Van Manen and Mr. Charlton, I'm going to allow that to a limited extent. It's contingent on their taking the stand. Because if it is just testified to or spoken of by counsel, counsel is not sworn and they can't testify, and the opening statements are supposed to be predictions of what is going to be said in evidence, admitted into evidence in the courtroom. So I'm prepared to allow a limited explanation or exposition of the defendants' character in the opening statements; but, as I say, it is contingent on their taking the stand. If they don't take the stand, the remarks by counsel will be subject to being stricken.

With respect to the Exhibits 262, 267, 268, 269 and 270, I will allow one picture only.

And with regard to the proffer statement, I can't rule on that now because I don't know what the statements are. I note, for example, in the last statement covered by Mr. Quijano's letter about defendant's proffer number 12 the

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1 defendant will not contest that during certain -- you are
2 asking for rulings on things that might not happen. As
3 Mr. Quijano says in his letter, he is mindful of the parameters
4 which would lead to the introduction of the defendant's proffer
5 statement should he argue or introduce evidence that
6 contradicts statements made during his proffer with the
7 government. I will take him at his word. We will just have to
8 see what the statements are and make rulings as we go along.

9 Anything else anybody wants to take up?

10 MR. QUIJANO: No, your Honor.

11 MS. O'NEILL: No, your Honor.

12 MR. FINKEL: Just two or three housekeeping measures
13 that I want to put on the record. First, since I handed this
14 up to Mr. Gonzalez, the parties have three additional names to
15 add to the people and places list. One was from the
16 government. It is an Albanian interpreter. Two were possible
17 witnesses that defendant Kenneth Charlton would call.

18 It is the government's understanding that this
19 universe -- there is no one else in the universe of possible
20 witnesses that the defendants may call. We would ask that the
21 court inquire that that is correct to ensure that the jury is
22 properly *voir dired* on all of the possible people who can
23 appear as witnesses at this trial.

24 THE COURT: Ms. O'Neill.

25 MS. O'NEILL: So far we have no other additional

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1 witnesses. I have nothing else really to speak about that.

2 THE COURT: Okay.

3 Mr. Quijano.

4 MR. QUIJANO: Nothing further, your Honor.

5 THE COURT: Okay.

6 MR. QUIJANO: We have no witnesses other than the
7 defendant, possible.

8 THE COURT: Okay. I understand.

9 MR. FINKEL: Can I just put on the record, your Honor,
10 two other issues?

11 One, Philip -- I hope I am pronouncing this
12 correctly -- Primason, which is one of the witnesses that
13 defendant Kenneth Charlton may call, the defendants have agreed
14 to exclude him from the courtroom even though he worked with
15 the prosecution team in case he is called as a witness. Sorry,
16 defense team.

17 And, second, just to let your Honor know, we have
18 prepared transcripts of some of the call recordings that will
19 be played when witnesses take the stand. We are prepared to
20 hand up packets of the various transcripts for the jury to
21 review. They are not being offered as evidence, just as an aid
22 to the jury during the testimony of a witness.

23 THE COURT: All right.

24 Ms. O'Neill.

25 MS. O'NEILL: Just for clarification, it is Philip

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1 Primason, not Primason.

2 THE COURT: Okay. Thank you for the clarification.

3 (Pause)

4 MR. FINKEL: Your Honor, if I may just put one
5 additional item on the record? Defendant Kenneth Charlton's
6 team has asked the government to assist them in getting a writ
7 for Nicholas Mogavero, who is a witness they may call. The
8 government has asked your Honor to sign the writ. We are going
9 to process that with our criminal clerk's office.

10 THE COURT: I signed the writ.

11 MR. FINKEL: Yes. I just wanted to put it on the
12 record.

13 THE COURT: Thank you.

14 MS. O'NEILL: Thank you, your Honor.

15 (Jury of 12 and 2 alternates impaneled and sworn)

16 THE COURT: Here is what we are going to do now. We
17 are going to give you some preliminary instructions, then we
18 will take an afternoon break, then the parties will make
19 opening statements and, if we are lucky, we will have our first
20 witness sworn and start his testimony today.

21 But I want to take a few minutes now to give you some
22 initial instructions about this case and about your duties as
23 jurors. After all the evidence is in and the lawyers have
24 summed up, I will give you final instructions, and then you
25 will begin your deliberations. I may also give you

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1 instructions during the trial. Unless I specifically tell you
2 otherwise, all such instructions -- both those I give you now
3 and those I give you later -- are equally binding on you and
4 you must follow them.

5 Your duty is to find from the evidence what the facts
6 are. You, and you alone, are the judges of those facts, and
7 then you apply the law as I give it to you to the facts as you
8 find them to reach your verdict. You have to follow the law
9 whether or not you agree with it. Now, please remember that
10 nothing I may say or do during the course of the trial is
11 intended to indicate or should be taken by you to be indicating
12 what your verdict should be. Your verdict is up to you. It is
13 strictly up to you.

14 I have already told you about the charges alleged in
15 this case. The defendants, Paul Van Manen and Kenneth
16 Charlton, are charged with conspiring to violate the narcotics
17 laws of the United States and were appropriately indicted by a
18 grand jury sitting here in this district. The indictment
19 charges that from at least in or about 2013, up to and
20 including in or about January 2018, Mr. Van Manen and
21 Mr. Charlton, along with others known and unknown, conspired to
22 distribute, or possess with the intent to distribute,
23 controlled substances, specifically heroin and fentanyl. The
24 indictment further charges as to Mr. Van Manen only that the
25 use of heroin and fentanyl distributed through the conspiracy

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1 resulted in the serious bodily injury of an individual named
2 Shaun Sullivan on or about October 5, 2017, and the death of
3 another individual, Michael Ogno, on or about December 1, 2017.
4 Mr. Van Manen and Mr. Charlton deny these allegations. The
5 government must prove the charges in the indictment beyond a
6 reasonable doubt.

7 The evidence from which you are going to find the
8 facts will consist of the testimony of the witnesses who will
9 sit right next to me in this chair, documents and others things
10 that will be received in evidence, and occasionally facts that
11 the parties may agree to, which we call stipulations.

12 Now, certain things are not evidence, and you should
13 not consider them. I'm going to list them for you.

14 First of all, the attorneys' arguments are not
15 evidence. The attorneys are not sworn as witnesses. They are
16 not under oath, and they do not testify. The attorneys'
17 statements and questions are not evidence either. Let me
18 emphasize this again. It is not the question that the lawyer
19 asks, what is important is the witness's answer to the
20 question.

21 Secondly, objections to questions are also not
22 evidence. It is the duty of the attorneys for each side of the
23 case to object when the other side offers testimony or other
24 evidence that the attorney believes is not properly admissible.
25 You should not be influenced by objections or by my ruling on

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1 it. If the objection is sustained, you will hear me say
2 "sustained." Then you should ignore the question. If I
3 overrule the objection, then you should treat the answer just
4 like any other answer. My job is to rule on what evidence
5 comes in at the trial, but I have no view on what your verdict
6 should be, because that is strictly up to you, the jury, to
7 decide.

8 If I instruct you that some evidence is being received
9 for a limited purpose only, you must follow that instruction.
10 Now, you don't have to worry about this right now. There may
11 not be a limiting instruction in this case. But if there is, I
12 will explain it to you at the time and will give you
13 instructions as clearly as I possibly can on what the
14 limitations are. I may tell you that I am excluding testimony
15 or tell you to disregard testimony. When I do that, it means
16 you should follow my instructions and ignore the testimony as
17 it is not in evidence.

18 In addition, anything you may have seen or heard
19 outside of this courtroom is not evidence and should be
20 disregarded. You are to decide this case solely on the
21 admissible evidence that is presented here in the courtroom.

22 There are two kinds of evidence that I want to review
23 with you -- direct evidence and circumstantial evidence.
24 Direct evidence is proof of a fact. An example of that would
25 be an eyewitness, somebody who actually saw the event as it

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1 occurred. Circumstantial evidence is proof of a fact or facts
2 from which you may infer or conclude that some other fact or
3 facts exist. Obviously I'm going to give you further
4 instructions on this and more details on these and other
5 matters at the end of the case, but just keep in mind that you
6 can consider both kinds of evidence, both direct and
7 circumstantial.

8 Now, a very important task for every jury is to decide
9 the credibility of witnesses, and it is going to be up to you
10 to decide which witnesses to believe, which witnesses not to
11 believe, how much of any witness's testimony to accept or
12 reject. Again, in my instructions to you at the end of the
13 trial, I will give you some guidelines which I hope will be
14 helpful in determining witness credibility.

15 Remember what we discussed earlier. First, a law
16 enforcement witness's testimony gets no greater or lesser
17 weight because of their law enforcement status. Second,
18 cooperating witness's testimony can be considered but, as I
19 will instruct you, you should consider it with great care.

20 This is a criminal case. You must know that there are
21 three basic rules about criminal law that you have to keep in
22 mind: (1) the defendants are presumed innocent; (2) the
23 government has the burden of proof; and (3) the government must
24 prove its case beyond a reasonable doubt.

25 Let me go through these separately now.

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1 First, as I mentioned, the defendants are presumed
2 innocent until proven guilty. The indictment against the
3 defendants brought by the government is only an accusation and
4 nothing more. It is not proof of guilt or anything else. The
5 defendants, therefore, start out with an absolutely clean
6 slate.

7 Second, the burden of proof is on the government. The
8 defendants have no burden to prove their innocence or to
9 present any evidence or to testify. Since they have the right
10 to remain silent, the law prohibits you from arriving at your
11 verdict by considering that the defendants may have not
12 testified.

13 Third, the government must prove the defendants' guilt
14 beyond a reasonable doubt. Again, I will give you further
15 detailed instructions on this point later, but bear in mind
16 that in this respect, a criminal case is different from a civil
17 case. The criminal standard of proof is proof beyond a
18 reasonable doubt.

19 From time to time during the trial, it may become
20 necessary for me to talk with the lawyers out of the hearing of
21 the jury, either by having a conference at the bench when the
22 jury is present in the courtroom -- that's what we call a
23 sidebar -- or by calling a recess. Please understand that
24 while you are waiting, we are working. The purpose of any
25 conference outside your viewing is not to keep relevant

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1 information from you, but to decide certain procedural issues
2 and how certain evidence is to be treated under the rules of
3 evidence and to avoid confusion and error.

4 Now just a few words about your own conduct as jurors.
5 First of all, do not discuss the case with anyone or permit
6 anyone to discuss it with you. Most of you probably use
7 computers. My instruction to not discuss the case includes
8 discussing the case in person, in writing, by phone or
9 electronic means, via text messaging, e-mail, Facebook,
10 Twitter, blogging, or any other form of social media. This
11 even includes discussing the case with your fellow jurors in
12 the jury room while the trial is going on. You cannot
13 deliberate on your verdict until after you are charged by me,
14 and that takes place at the end of the trial. Until then, you
15 simply cannot talk about the case, so you can talk to each
16 other about almost anything that you would like, but don't talk
17 about the case.

18 Now, I'm sure this may seem strange to you. Here is
19 the reason. Obviously the evidence can only be presented one
20 witness at a time and one exhibit at a time. we don't want you
21 to start talking to each other and reaching conclusions before
22 you've had an opportunity to see and hear all the evidence in
23 the case and hear my instructions on the law. So that is why
24 we direct you to begin your deliberations at the end and, until
25 that time, not to have any discussion about this case. Think

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1 of the case like a painting where you cannot tell from one
2 stroke or color what the painting will look like. You have to
3 wait until it is finished to make a judgment, and that's what
4 we ask you to do.

5 If at any time during the course of this trial any
6 person attempts to talk to you or communicate with you about
7 the case, either inside or outside the courthouse -- and I
8 certainly hope this does not happen -- you should immediately
9 report such an attempt to me. Don't bring it to the attention
10 of other jurors, just send me a note directly.

11 Also the lawyers and other participants at the counsel
12 table have been instructed not to have any communication with
13 you as jurors. That's the rule. You may not say hello or even
14 wave. That goes for you, the lawyers, and the witnesses. In
15 this courthouse, you may see people in the elevators. So if
16 you run into one another, please don't acknowledge them or
17 expect them to acknowledge you. They are under instructions
18 not to have any communications, and they are going to observe
19 that rule.

20 If at any point in the trial you recognize someone in
21 the courtroom, including a friend or family member, please let
22 me know immediately. If this occurs while the trial is in
23 session, please raise your hand.

24 Don't read or listen to anything touching upon this
25 case in any way. Don't try to do any research on your own or

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1 conduct your own investigation. This means, for example, that
2 you should not consult a dictionary, search the Internet,
3 websites or blogs, or use any electronic tools to obtain
4 information about this case. If you see something about this
5 case in the newspaper, you must not read the article. Avoid
6 watching television discussions about this case or issues
7 involved in this case. Your sworn duty is to decide this case
8 solely and wholly on the evidence presented in this courtroom.

9 If you wish, you can take notes while the evidence is
10 being presented to you. This is permitted because so many
11 people find that taking notes helps them focus on the testimony
12 being given. You should not try to summarize the testimony,
13 however. We have two excellent court reporters who take down
14 everything said throughout the trial. Your job is to listen to
15 the testimony and assess the credibility of witnesses. If you
16 do take notes, do not let it distract you from that task.
17 Moreover, your notes are for your private use only, as a way to
18 help you recall the testimony when you begin your
19 deliberations. Your notes are not entitled to any greater
20 weight than the recollection of a juror who did not take notes.
21 Finally, you may not take your notes away from the court.
22 Leave them in the jury room at the end of each day.

23 Let me tell you again how important your service is
24 and how much we appreciate it. During a trial, all of us have
25 to be here before any work can be done -- that includes the

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1 attorneys; the witnesses; the court reporter; me, the judge;
2 and you, the jury. If one person is missing, everything stops.
3 That's why this makes it a little bit different from work.
4 This is not a situation where you can simply call in sick.
5 There are, of course, extraordinary circumstances that may
6 excuse you from serving on this jury, but in all other
7 circumstances, we need you to be here every day and on time. I
8 understand that this may impose a burden but, as I have said,
9 this is an important service and one that is greatly
10 appreciated.

11 The trial day starts at 9:30 except for Fridays, when
12 we start at 9 a.m. About half an hour before we start, we will
13 open up the jury room and provide you with a light breakfast.
14 Coffee and a little snack, some tea. We also provide you with
15 an afternoon snack when we take our afternoon break. We cannot
16 provide you with lunch.

17 The morning session will last until 12:45. On Monday
18 through Thursday, we will resume at 2:00 and go until 4:30. On
19 Fridays, we will end at 1 p.m. with no afternoon session.
20 There are breaks in the morning and afternoon for 15 minutes.

21 Here is how we are going to proceed. The government
22 will make an opening statement, which is an outline of what
23 they hope to prove and to help you understand the evidence as
24 it comes in. Next, the defendants may make an opening
25 statement, but they do not have to. Please remember as you

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1 listen to the opening statements by the lawyers that their
2 statements are not evidence.

3 Then government will start presenting its witnesses
4 and the defense may cross-examine those witnesses. Following
5 the government's case, the defendants may, if they wish,
6 present witnesses, but they do not have to do so.

7 After all the evidence is in, each side will have the
8 opportunity to get up again and present their closing arguments
9 to you. In these arguments, they are going to summarize and
10 interpret the evidence.

11 And then of course I will instruct you on the law.

12 After all that is completed, you will retire to
13 deliberate on your verdict.

14 Now for some housekeeping matters. Let me introduce
15 David Gonzalez, who is my courtroom deputy. You are going to
16 be working with Mr. Gonzalez. He will help you in the jury.
17 Room he will give you the notepads if you want to take notes.
18 If you have any troubles or problems, see Mr. Gonzalez.

19 Amy Torres and Annie O'Toole are my two law clerks who
20 assist me on legal matters. Our court reporter is Kristen
21 Carannante, and Eve Giniger is the other lady who takes notes.

22 So we are going to take a break now for about ten
23 minutes. You can hang up your stuff, and then we will resume
24 with the opening statements.

25 We are going to rearrange your seats so that the first

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1 six seats in the first row, six seats in the second row will be
2 all together, and the two alternates will sit in the third row
3 by themselves. We will make those rearrangements while you are
4 on break.

5 Thanks very much. Enjoy your break.

6 (Continued on next page)

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1 (Jury not present)

2 THE COURT: See you in ten minutes.

3 MS. FENDER: Thank you, your Honor.

4 (Recess)

5 (Jury not present)

6 THE COURT: Ms. Ghosh, you are going to make the
7 opening?

8 MS. GHOSH: Yes, your Honor.

9 (Continued on next page)

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(Jury present)

THE COURT: Please be seated.

Ms. Ghosh.

MS. GHOSH: Thank you, your Honor.

This is a case about drug dealers, a ring of drug dealers that sold thousands and thousands of doses of heroin, week after week, for years, including heroin that was mixed with an even more dangerous drug called fentanyl, and these two defendants, Paul Van Manen and Kenneth Charlton, were members of that group who found customers, sold heroin, and ignored the consequences.

In the fall of 2017, one person overdosed on the group's drugs. He was able to be saved by a firefighter. But less than two months later, one of Van Manen's customers wasn't so lucky. When that young man overdosed from drugs, Van Manen had sold him, he died, and that's why we are here today. Because of the choices they made and the things they did, Van Manen and Charlton have been charged with conspiring, or agreeing with others, to distribute heroin and fentanyl and Van Manen has been charged with agreeing to distribute drugs that caused two overdoses, one of them fatal.

Let me step back. I want to do two things in my time before you this afternoon. First, I'm going to give you a preview of what the evidence will show about these defendants' crimes. Then I will explain how the government will prove its

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1 case.

2 So what will the evidence show? First, you will learn
3 how the defendants got the heroin and fentanyl that they sold
4 to others. You will hear that the defendants were part of a
5 group of heroin dealers who operated mainly out of Staten
6 Island. Most of the time the defendants and others in their
7 group got their heroin from a supplier in Brooklyn, who was
8 just a short trip over the Verrazzano Bridge.

9 You will learn that they sold their drugs to customers
10 on Staten Island. The heroin came prepackaged from the
11 suppliers in tiny envelopes called glassines or bags. Now,
12 particularly when mixed with fentanyl, just a few of those
13 little bags, even two or three, can cause an overdose. But the
14 defendants and their associates sold hundreds and hundreds of
15 these bags every single day. They sold some of this heroin
16 directly to users. They also acted as middlemen and sold
17 larger amounts of drugs to other dealers who in turn sold to
18 users on the street. The drug crew repeated this cycle day
19 after day. Thousands and thousands of doses of heroin,
20 kilograms worth, for years, from 2013 until January 2018, when
21 the defendants and other members of the drug ring were
22 arrested.

23 During those years, they worked together to obtain and
24 sell drugs. They drove each other around to customers or to
25 get more heroin from Brooklyn. They sold each other drugs on

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1 credit. They shared and referred customers.

2 Now, different members of the group had different
3 roles. Van Manen was one of the primary dealers in the drug
4 ring. You will learn that he picked up about 200 to 400 bags
5 of heroin multiple times every week from suppliers and then
6 peddled those drugs to users and other resellers. Charlton was
7 one of the resellers that other members of the heroin ring sold
8 to, and he then sold directly to users. And at times, when his
9 own heroin habit got in the way and he didn't have enough money
10 to buy drugs outright, he referred customers to another dealer
11 in the drug ring. In return, he got drugs to use and to refill
12 his supply so he could keep selling.

13 Now, both Charlton and Van Manen used some of the
14 heroin themselves, but make no mistake: This was business.
15 Increasing the number of customers, making sure they had high
16 quality product, and trying to turn that product into profit,
17 feeding off the addictions of their customers, nothing was
18 going to get in the way of that business, not even when people
19 got hurt, not even when someone died.

20 You will learn that one of the people injured by the
21 drugs peddled by this group was himself a dealer in the drug
22 ring. Late one night in October of 2017, Van Manen picked him
23 up and they drove to Brooklyn to pick up drugs from their
24 supplier, as usual. The next morning, this dealer used just
25 two of those little bags of heroin and overdosed. That heroin,

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1 like other batches the drug ring sold, was laced with fentanyl,
2 a drug even more potent, more toxic, than heroin. But the fire
3 department rushed to the scene and they were able to save this
4 man's life. This person's overdose was well known within the
5 drug ring. You will learn that Van Manen talked about it with
6 other members. He talked about how the group's fentanyl-laced
7 heroin, heroin that Van Manen was selling as well, had caused
8 that overdose, but that did not stop Van Manen's drug dealing.
9 Business as usual every day.

10 In less than two months after that dealer's overdose,
11 Van Manen sold heroin again laced with fentanyl that caused
12 another overdose. This time it was fatal. One of his
13 customers, Michael Ogno, died. You will learn that on December
14 1, 2017, Van Manen sold heroin to Ogno. That same day, Ogno
15 used that heroin laced with fentanyl and it killed him. Ogno's
16 girlfriend found his body hours later. On his dresser she
17 found the empty bags of the heroin that Van Manen had sold him.
18 On his nightstand was the syringe Ogno had used to inject the
19 drugs. He was just 26 years old. But even this didn't stop
20 Van Manen from continuing to sell. Business as usual.

21 So that's an overview of what I expect the evidence
22 will show.

23 Now, how will the government prove its case? Well,
24 partly through the defendants' own words. You will hear and
25 see the defendants planning their sales, negotiating prices,

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1 trying to avoid law enforcement, recruiting new customers. You
2 see, law enforcement had wiretaps on the phones of some members
3 of the drug ring and the defendants' phones were seized and
4 searched after their arrests last year. So you will hear calls
5 and see text messages that they sent to associates and
6 customers when they had no idea they were being recorded, for
7 example, texts in which Charlton refers customers to a dealer
8 in the drug ring or texts in which Charlton agrees to start
9 working for that dealer again after a break because he wasn't
10 using heroin anymore, so he said he wouldn't do something
11 stupid like get arrested. And you will see the text messages
12 between Van Manen and Michael Ogno, the overdose victim, on the
13 day of Ogno's death arranging to meet up so Van Manen could
14 supply Ogno with heroin. Those were the last text messages
15 Ogno ever sent.

16 You will also see physical evidence, like some of the
17 thousands of heroin bags that were distributed by the
18 defendants and other members of the drug ring, heroin and
19 fentanyl that was seized by law enforcement when their
20 defendants and associates slipped up and sold to an undercover
21 officer or got arrested. You will see photographs, like some
22 taken during surveillance of the defendants and their
23 associates doing drug deals and others from the scenes of the
24 overdoses. You will see evidence of some of the money that the
25 defendants pocketed for peddling their drugs. For instance,

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1 you will see records of the money that Michael Ogno sent to
2 Van Manen on the day he died, payment for the drugs that killed
3 him.

4 And you will also hear from a number of witnesses.
5 You will hear from some of the first responders who saw the
6 aftermath of the crew's heroin sales, like the firefighter who
7 was able to revive the dealer who overdosed and the police
8 officer who responded to the scene of Michael Ogno's fatal
9 overdose. You will also hear from Michael's girlfriend. She
10 will tell you what she knew about Michael's dealer and what it
11 was like to find his body. You will also hear from law
12 enforcement officers, like a detective who spent months
13 investigating some of the members of the drug ring, and you
14 will hear from members of the heroin ring themselves, insiders
15 who worked directly with the defendants and their associates,
16 who will tell you all about this drug ring. Like the
17 defendants, each of these insiders had a slightly different
18 role, and so each one will give you a different piece of the
19 puzzle. They will explain to you how these two defendants
20 operated, how they got their heroin, where they stored the
21 drugs, how they recruited customers, the inner workings of the
22 group.

23 Now, make no mistake about it, these witnesses are not
24 testifying out of the goodness of their hearts. Just like the
25 defendants, they are drug dealers who committed serious crimes,

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1 and they are cooperating with the government in the hopes of
2 getting a reduction in their sentences. But the question is
3 not whether you like them or what they have done. The question
4 is whether they are telling you the truth. So listen carefully
5 to their testimony and consider how what they are telling you
6 fits with all of the other evidence in this case, like the
7 phone calls, the text messages, the physical evidence, and the
8 surveillance.

9 Finally, you will hear from a medical examiner who
10 will explain how the drugs Michael Ogno ingested killed him and
11 why the heroin and fentanyl sold by these defendants is so
12 dangerous.

13 Now, at the end of the trial, we will have the chance
14 to speak with you again about how all of the evidence fits
15 together. Between now and then, I am going to ask you to do
16 three things: First, pay close attention to the evidence;
17 second, listen to Judge Crotty's instructions on the law; and,
18 third, use your common sense, the same common sense you use in
19 your everyday lives.

20 If you do those three things, the defendants will get
21 a fair trial, the government will get a fair trial, and you
22 will reach the only verdict consistent with the evidence, the
23 law, and common sense: The defendants, Paul Van Manen and
24 Kenneth Charlton, are guilty.

25 THE COURT: Thank you, Ms. Ghosh.

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Ms. Sideris.

MS. SIDERIS: Thank you, your Honor.

Paul Van Manen is an addict. He is a junkie. He bought heroin from Medin Kotic and he sold that heroin to others, to other addicts. That's not what he is charged with here.

This entire case will start and end with one question: Was Paul Van Manen a member of the Kotic drug conspiracy? And the answer to that question is no.

The evidence will show that Medin Kotic was only one of Paul Van Manen's drug dealers. You will hear the truth that Paul did not have any deal with Kotic where he would be able to buy heroin on credit from him. Medin Kotic did not give Paul any discount like he did members of his conspiracy. Kotic would not tell Paul where or to whom he could sell heroin. Kotic would not get any kind of kickback from heroin that Paul sold. Paul did not work for or with Kotic. He did not manage Kotic's stash house. He did not package heroin for Kotic. He did not get him additional customers.

All Paul did was buy grams of heroin at a time, using some for himself to get high and then selling some of it so that he could buy more, to keep the cycle going. The only relationship that existed between Kotic and Paul was that Kotic, the seller, would sell heroin to Paul, the buyer. And ladies and gentlemen, buyer-seller does not make Paul a member

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1 of the charged conspiracy. You will learn that buyer-seller
2 means Paul Van Manen is not guilty.

3 May it please the court, Judge Crotty; Mr. Van Manen;
4 and ladies and gentleman of the jury:

5 I would like to take this opportunity to thank you for
6 your time and cooperation during the jury selection process. I
7 know that jury selection is tedious and a drawn-out process,
8 but I trust you will understand or at least you will come to
9 understand by the end of this trial the importance that jury
10 selection plays in a trial. So on behalf of Mr. Van Manen,
11 Mr. Quijano, and myself, his court-appointed attorneys, thank
12 you.

13 Now, you have just heard the government's opening
14 statement. You may have thought it was eloquent and even
15 persuasive. It was not evidence of any kind. In fact, up to
16 this point, you have not heard a single word of evidence. Up
17 to this point, all you have heard are allegations and
18 accusations in the form of the indictment and the government's
19 opening statement. Please remember the only reason we are even
20 here today is because Paul Van Manen pled not guilty to the
21 indictment and, as such, he is presumed innocent of each and
22 every allegation.

23 Perhaps the most important thing I can do, that I can
24 hope to accomplish right now is to remind you of what you have
25 promised to do as jurors, to keep an open mind. Keep an open

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1 mind until you have heard all of the evidence, all of the
2 testimony -- the direct examinations and the
3 cross-examinations.

4 While you are listening to the government's witnesses
5 and their evidence, please keep an open mind and remember this:
6 After the government's case, you will hear from Paul Van Manen.
7 He is going to testify, and he will tell you the truth about
8 all of the events and his conduct in relation to the
9 government's witnesses.

10 Paul does not have to testify. That's the law. And
11 under the law, if he doesn't testify, you would not be
12 permitted to hold that against him because he has the
13 fundamental right to remain silent, because the burden of proof
14 is on the government and he is presumed innocent. But he is
15 choosing not to remain silent. He is choosing to testify
16 because he wants to explain the truth, he wants to explain the
17 government's evidence to you, and wants you to hear the truth.
18 So please keep your promise to keep an open mind until
19 Judge Crotty has instructed you on the law.

20 Ladies and gentlemen, if you keep this basic,
21 fundamental promise, if you keep an open mind, contrary to what
22 you just heard from the government, you will find that the
23 evidence will not establish that Paul Van Manen was a member of
24 Kosic drug conspiracy. The evidence will show that, rather
25 than having joined and been a member of the charged conspiracy,

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1 Paul was merely a customer.

2 Paul bought heroin from other people as well. The
3 evidence will show that he bought small amounts of heroin every
4 couple of days. He was not loyal to any drug dealer. He just
5 needed to have his heroin.

6 And you will see that his dealer Kosic knew Paul was
7 an addict. The evidence will show that he would take advantage
8 of that when Paul needed to buy heroin. He would ask for
9 favors when Paul was on the way: Pick up a slice of pizza; get
10 me a ride somewhere. None of that benefited Paul in any way.
11 He didn't get a discount. His dealer, his seller, Kosic, was
12 just using an addict because he could.

13 The evidence will show that Paul and his friend Doreen
14 Spinelli bought heroin together. They used heroin together.
15 They would also sell heroin together to other addicts and then
16 use that money to buy more heroin for themselves. The evidence
17 will show that before selling any of their heroin, the first
18 thing that Paul and Doreen would do is take care of themselves.
19 They would get high. They were always first in line and first
20 to taste.

21 The evidence will show that Paul would buy small
22 amounts of heroin from Kosic -- ten to 20 bundles at a time.
23 That's not kilograms of heroin. That's not a pound of heroin.
24 That's not an ounce of heroin. The evidence will show that's
25 what amounted to grams of heroin. You will learn that in one

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1 bundle of heroin is ten tiny envelopes containing around .03
2 grams of heroin. So in an entire bundle of heroin is less than
3 half a gram.

4 Paul engaged in criminal conduct. He possessed and he
5 sold heroin. He himself will admit that to you. He doesn't
6 deny that. He doesn't try to hide that. Those are crimes, but
7 not the crime charged here. That's not the question you will
8 be asked at the end of the trial. The question is whether Paul
9 Van Manen is guilty -- is a member of the conspiracy charged in
10 the indictment.

11 As you know, the government is also claiming that, as
12 a result of his alleged involvement in the conspiracy, Paul
13 Van Manen is responsible for Michael Ogno's death on December
14 1, 2017, and also for an individual Shaun Sullivan's alleged
15 overdose on October 5, 2017.

16 The evidence will show that when Michael Ogno
17 tragically died of an overdose, found in his system was a
18 combination of drugs -- fentanyl, heroin, and Xanax. At some
19 point before he died, Michael Ogno ingested heroin, fentanyl,
20 and Xanax. All contributed to his death. The evidence will
21 show that Michael Ogno and Paul Van Manen were friends; that,
22 like Paul, Michael Ogno was a drug addict, he was addicted to
23 heroin and other drugs; that Michael Ogno and his childhood
24 friend, Derek Yung used heroin and other drugs together
25 starting from high school; that Paul sold heroin to Michael

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1 Ogno; that Paul sold heroin to Derek Yung; also that Derek Yung
2 sold heroin to Michael Ogno and Derek Yung sold heroin to Paul.
3 The evidence will show that Derek Yung and Michael Ogno bought
4 heroin and other drugs from various dealers. You are not going
5 to hear evidence that it was heroin or fentanyl from Paul that
6 caused Michael Ogno's death. At the end of all the evidence,
7 you will not hear from where Michael Ogno got the drugs that
8 led to his fatal overdose.

9 Now, Shaun Sullivan's overdose on October 5, you will
10 hear evidence that Shaun Sullivan was a drug dealer. He was
11 part of the charged conspiracy. He and his wife Diane used
12 heroin together and sold heroin together. They sold heroin to
13 a lot of people. On the morning of his alleged overdose, Shaun
14 Sullivan and his girlfriend, Corrine, were using heroin
15 together; that on October 5, at around 9 a.m. Shaun Sullivan
16 and Corrine were in a bed and breakfast in Staten Island
17 getting high, and Corrine called 911.

18 Thirteen hours earlier, Paul and Doreen were on their
19 way to pick up heroin from their dealer, Kotic, and they gave
20 Shaun Sullivan a ride. The evidence will show that, per
21 Kotic's request, it was Shaun Sullivan alone who got out of the
22 car and met with Kotic to purchase the heroin for himself and
23 Paul and Doreen. After Shaun Sullivan gave them their heroin,
24 Paul and Doreen proceeded to get high without incident.

25 The next day, the next morning, Corrine called 911.

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1 Shaun was taken to the hospital and left a few hours later.
2 The evidence will not show what drugs were in his system, but
3 Shaun Sullivan is going to testify in this case as a
4 cooperating witness.

5 In attempting to meet its burden beyond a reasonable
6 doubt that Paul Van Manen was a member of this conspiracy, the
7 government will rely on the testimony of three cooperating
8 witnesses. Unlike Paul, all three of them were members of the
9 charged conspiracy. The evidence will show that they have pled
10 guilty to the same charge that Paul faces, but before they pled
11 guilty, they made and signed a deal with the government.

12 The evidence will show in this deal the parties are
13 the government and the witness. Judge Crotty is not part of
14 this deal. And like any deal, each party is getting a benefit.
15 You will learn that the government gets this witness to plead
16 guilty and the government gets this witness to cooperate, to
17 testify. In return, the witness gets the government will write
18 a letter to Judge Crotty when it comes time for that witness's
19 sentencing, a very powerful letter. The witness will tell you
20 that for what he has pled guilty, for that charge, he can be
21 sentenced up to a maximum of life imprisonment and the witness
22 will tell you for what he pled guilty there is a mandatory
23 minimum sentence. For Shaun Sullivan and Anthony Francese,
24 they are facing a mandatory minimum of ten years in prison.
25 For Jasmin Cejovic, he is facing a mandatory minimum of 20

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1 years in prison. But with this letter that the government will
2 write to Judge Crotty, they no longer face the mandatory
3 minimum sentence. The evidence will show that, with that
4 letter, Judge Crotty can sentence the witness to anything from
5 zero to life. That is their deal. That is what the witnesses
6 understood they could get for testifying against Paul
7 Van Manen.

8 Now, the witnesses will tell you that to get this
9 letter, they have to do more than just testify. They must tell
10 the truth. Listen carefully to the witness when he tells you
11 who decides if he told the truth to qualify for this amazing
12 letter that lets him escape a mandatory minimum sentence. For
13 the purpose of the letter, it is not you who decides. It is
14 also not Judge Crotty. The witness knows it is the government
15 who decides if the witness has told the truth, it is the
16 government who decides if Shaun Sullivan and Anthony Francese
17 have the chance to escape from a mandatory minimum sentence of
18 at least ten years, and it is the government who decides if
19 Jasmin Cejovic can escape a prison sentence of at least 20
20 years.

21 Please bear that in mind. Remember that as you
22 evaluate the testimony of Shaun Sullivan, Anthony Francese, and
23 Jasmin Cejovic. Listen to Shaun Sullivan when he tells you how
24 worried he was about facing more than ten years when he decided
25 to cooperate and testify against Paul.

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1 Another witness you will hear from is Derek Yung. For
2 testifying against Paul Van Manen, Derek Yung gets the promise
3 of never being prosecuted for the crimes which he is going to
4 admit -- which he has admitted -- selling drugs, selling
5 heroin, including selling heroin to his with a childhood friend
6 Michael Ogno, who had a fatal overdose. And all Derek Yung has
7 to do is testify against Paul Van Manen. And if the government
8 decides he told the truth, he gets to walk away and he never
9 has to even plead guilty to a crime.

10 Some of the evidence in this case will be in the form
11 of phone calls or text messages. Please remember, these may
12 appear to have one meaning on their face, but we all know that,
13 out of context, words or even short conversations, these can be
14 interpreted to have any meaning, they can be interpreted to
15 have two opposite, extreme -- extreme opposite meanings
16 depending on who is doing the interpretation, especially text
17 messages. So wait to hear for the explanation from Paul. Wait
18 to hear from him the truth. Keep an open mind.

19 In a short while, the trial will start. Witnesses
20 will be called. They will testify. They will be
21 cross-examined, and the parties will give their closing
22 arguments. All I ask from you at this point is that you stay
23 true to your oath as jurors; that you keep an open mind until
24 you have heard from Paul Van Manen himself, until you have
25 heard the final instructions from Judge Crotty.

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1 After all of the evidence, Peter Quijano will come
2 before you and he will ask from you the only verdict that the
3 facts and the law will demand in this case: a verdict of not
4 guilty.

5 Thank you.

6 THE COURT: Thank you, Ms. Sideris.

7 Ms. O'Neill.

8 MS. O'NEILL: Buying heroin doesn't work like buying a
9 gallon of milk at the grocery store or ordering eggplant
10 parmigiana at your favorite Italian restaurant. It's a game of
11 cat and mouse, where addicts and dealers are constantly trying
12 to get what one wants and the other needs. And that makes
13 sense because heroin is illegal.

14 Now, Kenny Charlton was a homeless heroin addict who
15 was friends with other heroin addicts, and when they needed to
16 score, they got as much money together as they could, they
17 pooled that money and they started working the phones so that
18 they could get ahold of one of their many heroin dealers. They
19 got as much as they could together, they called as many dealers
20 as they could, and then one of them answered the phone.

21 Finding drugs and hustling dealers is all part of
22 being a heroin addict. And for Kenny, for Kenny, when he was
23 addicted to heroin, lying to his dealers was what it took to
24 get heroin. When he was trying to score, he called multiple
25 dealers and his friends called multiple dealers just so that

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1 they could get heroin. He lied to those dealers to get them to
2 come. And if one of those dealers didn't show up, he lied to
3 them again. He lied to them later and he said, oh, you missed
4 out. You missed out on the best customer. You missed out.
5 You missed out on all this money. You missed out. You were
6 going to get a new regular customer. He told them how many
7 customers they would have had if only, if only, they would have
8 shown up when he asked them to.

9 This was part of Kenny Charlton's game. This was what
10 kept dealers interested in him. And that makes sense, doesn't
11 it? It makes sense. Just think about a homeless junkie in
12 your mind. It's a person who would say anything to get heroin.
13 And tragically, that is what Kenny Charlton's life had become.
14 It had become a never-ending quest for heroin, a never-ending
15 series of lies and manipulations. Kenny Charlton lost his
16 work, he lost his home, he lost his self-respect to heroin. He
17 was in the margins of society and heroin had broken him.

18 The government is going to show you text messages and
19 phone calls from Kenny to one of his many heroin dealers and
20 they are going to show you messages of him promising to pass
21 the dealer's name to other heroin addicts. You are going to
22 hear him begging his dealer, offering anything he could just to
23 get heroin. "I have two Suboxones, please." Trying to make
24 the dealer feel sorry for him, "I'm pawning my tools. I'm
25 pawning my motorcycle seat. I'm pawning my guitar. I'm

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1 picking weeds, please."

2 Yes. Before heroin ruined, ruined, Kenny Charlton's
3 life, he used to be a motorcycle-riding, guitar-playing, union
4 carpenter. Now, by the time he was arrested in this case,
5 Kenny was a homeless junkie. He lied. He stole, he was barely
6 alive, and this, this, is what drug addiction looks like. This
7 is what seven years of heroin addiction looks like. This is
8 what desperation looks like. This is what heroin does to
9 people. You lose everything to it. You lose everything. And
10 that, that is why it is illegal. That is why the government is
11 supposed to be prosecuting drug dealers. Many of Kenny's
12 friends have overdosed and died, and Kenny himself has
13 overdosed. Nobody would want their child to grow up to be like
14 Kenny Charlton.

15 The truth, the truth in this case is that Kenny had
16 many dealers, all different, but all very much the same. His
17 dealers were people who had what he needed. Some dealers were
18 better and worse than others. Some dealers had better and
19 worse prices. Some dealers charged more or less at various
20 times. Some dealers were more responsive. And some dealers
21 were eager for his business. He circled through those dealers,
22 calling them, texting them, telling them whatever it took to
23 get heroin, and he had to do this every single day.

24 The government arrested Kenny Charlton in this case
25 and they charged him with participating in one of his heroin

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1 dealer's narcotics conspiracies. The government is going to
2 put forth a bunch of witnesses and, quite honestly, we aren't
3 going to ask a lot of questions and that's because these
4 witnesses have nothing to do with Kenny and that's because
5 Kenny was not a member of this group or ring or conspiracy or
6 whatever you want to call it.

7 And then, and then, the government is going to bring
8 in one of Kenny Charlton's drug dealers to testify against him.
9 That's right. Jasmin Cejovic, the dealer Kenny knew as Min is
10 the government's main witness against Kenny. Kenny wasn't a
11 part of the conspiracy we are talking about here. He didn't
12 know anything about the operation. He didn't know anything
13 about who Kasic was or where the stash house was. He didn't
14 know any of this, and he didn't care to. Who Min got his drugs
15 from or where they were stored, that wasn't anything to him.
16 He just needed to get high. He kept Min's number, he used it
17 off and on for stretches of time, and then Min cut him off, and
18 then he hustled another dealer until that one cut him off.
19 That's what being a drug addict is. That's what it does to
20 you. It is a vicious, vicious cycle, over and over and over
21 again, trying desperately to get drugs.

22 The truth? The truth is that Min preyed on Kenny and
23 addicts like him. To Min, Kenny was just a dollar sign. Min's
24 this wannabe Playboy gangster, dressing in fur coats and fancy
25 watches, making a rap video, making a rap video while he was

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1 out on bail in this case about selling drugs.

2 (Continued on next page)

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Opening - Ms. O'Neill

1 MS. O'NEILL: And Min, Min is now allowed to prey on
2 Kenny again, as Min tries to trade his jail sentence for
3 Kenny's. He made hundreds of thousands of dollars preying on
4 the backs of addicts, just like Kenny, and now he is going to
5 get time off his sentence? He is going to get time off his
6 sentence for testifying against Kenny?

7 When you are hearing this guy talk, ask yourself: Is
8 this for real? Is this guy believable? He is not. He is not
9 believable. He is a liar. He is a liar. And when I come back
10 up here at closing, you are going to hear me tell you exactly
11 how he lied.

12 Kenny Charlton was a heroin addict. There is
13 absolutely no denying that. He tried to get as much heroin as
14 he could so that he could get high. That's what he did. There
15 is no denying that.

16 You could say there is something wrong with his
17 character; he was weak; he succumbed to addiction. But this
18 case, this case is not about whether Kenny Charlton is weak or
19 an addict or a small-time con. It is about whether Kenny
20 Charlton was a member, a member of this conspiracy, to
21 distribute narcotics. And ladies and gentlemen, that is
22 ridiculous.

23 Kenny Charlton isn't Min or the other members of this
24 conspiracy. He is a victim. He is a drug addict. He is a
25 victim of this conspiracy. He is not a perpetrator. Kenny

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Wong - Direct

1 Charlton is innocent of these charges. Kenny Charlton is not a
2 drug dealer and not a member of this conspiracy. And when you
3 hear all the evidence, I know that you will return the only
4 verdict that is just, and that is that Kenny Charlton is not
5 guilty.

6 Thank you.

7 THE COURT: Government will call its first witness.

8 MS. GHOSH: Your Honor, the government calls Lee Wong.

9 THE DEPUTY CLERK: Please state and spell your full
10 name for the record.

11 THE WITNESS: First name Lee, L-E-E, last name Wong,
12 W-O-N-G.

13 LEE WONG,

14 called as a witness by the government,

15 having been duly sworn, testified as follows:

16 THE COURT: Please sit down and make yourself
17 comfortable.

18 Pull yourself right up to the microphone.

19 OK, Ms. Ghosh.

20 DIRECT EXAMINATION

21 BY MS. GHOSH:

22 Q. Sir, where do you work?

23 A. 256 Hylan Boulevard, Staten Island, New York.

24 Q. What is that?

25 A. That is our firehouse.

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Wong - Direct

1 Q. How long have you been employed at the firehouse?

2 A. I have been on the fire department for two and a half
3 years.

4 Q. What is your current title?

5 A. Firefighter.

6 Q. Generally speaking, what are your duties and
7 responsibilities as a firefighter?

8 A. As a firefighter we respond to any emergency in regards to
9 fires, gas emergencies, water emergencies, as well as emergency
10 medical service.

11 Q. What do you mean by emergency medical services?

12 A. It could be an array of things, cardiac arrests, trauma,
13 anything in regards to, if you call 911, we are usually the
14 first ones to respond.

15 Q. What type of training do you receive regarding emergency
16 medical service procedures?

17 A. The type of training that we receive, right before you go
18 into the academy they give you training in the academy for
19 about 16 weeks, as well as a refresher course for emergency
20 medical services every three years after that.

21 Q. Firefighter Wong, directing your attention to October 5,
22 2017, were you working that day?

23 A. Yes, I was.

24 Q. About how long had you been with the fire department at
25 that time?

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Wong - Direct

1 A. At that time, I just finished graduating April 12th of
2 2017. So I figure about a couple of months.

3 Q. On October 5, 2017, what shift were you working?

4 A. That would be the 9 by 6, or 9 a.m. to 6 p.m.

5 Q. Were you working alone or with others?

6 A. I was working with others.

7 Q. Did there come a time on that day when you were asked to
8 respond to a potential overdose?

9 A. Yes.

10 Q. How did you first get notified?

11 A. We received a ticket through the Staten Island dispatcher
12 office via computer. That ticket is then relayed to our
13 firehouse and we respond, and we basically turn out the company
14 at that point.

15 Q. Where was the incident that you were responding to?

16 A. I believe it was 1 Hylan Boulevard, on the corner of Hylan
17 and Edgewater.

18 Q. What is located there?

19 A. That would be a three-story multiple dwelling that was
20 converted into a bed and breakfast.

21 Q. About how long did it take you to get to that location?

22 A. A matter of minutes because it's only about three blocks
23 from our firehouse.

24 Q. You mentioned a moment ago that once you got the ticket you
25 turned out the company. Can you just explain what that means?

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Wong - Direct

1 A. Turning out the company would be 10-4'ing or acknowledging
2 the run via computer so that the Staten Island dispatcher knows
3 that we are on our way, as well as reading the ticket out for
4 everyone else in the firehouse, our members, so they know what
5 they are responding to.

6 Q. I would like to show you now what has been marked for
7 identification as Government Exhibit 272.

8 MS. GHOSH: Ms. Dunbar, if you could put that up just
9 on the witness screen.

10 Q. Firefighter Wong, do you recognize this?

11 A. Yes.

12 Q. What is it?

13 A. That is the address where we responded for the patient or
14 the victim.

15 MS. GHOSH: Your Honor, the government offers
16 Government Exhibit 272 into evidence.

17 MR. QUIJANO: No objection.

18 THE COURT: 272 is received in evidence.

19 (Government's Exhibit 272 received in evidence)

20 MS. GHOSH: Ms. Dunbar, can you please publish
21 Government Exhibit 272 for the jury.

22 BY MS. GHOSH:

23 Q. Firefighter Wong, when you arrived at this building, where
24 did you go?

25 A. When we first pulled up to the building, we went to the

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Wong - Direct

1 front of the building, parked there.

2 Q. What did you do after parking?

3 A. I proceeded to exit the vehicle, do a quick size-up of the
4 building, as well as grab the EMS supplies that we were going
5 to be needing for whoever was in there.

6 Q. Where did you go next?

7 A. We proceeded to the front entrance of the building up the
8 stairs -- from the picture you can see it -- and then we were
9 met by hotel management.

10 Q. What happened after you met hotel management in the
11 building?

12 A. He proceeded to let us know that we had a male, a young
13 male --

14 MR. QUIJANO: Objection.

15 THE COURT: Overruled.

16 A. He proceeded to let us know that there was a male in the
17 establishment that was not responding and possibly unconscious.

18 Q. Where did you go next?

19 A. We proceeded to follow him to the second floor of the
20 building.

21 Q. Who went to the second floor?

22 A. That was myself and two other firefighters, as well as the
23 lieutenant and the hotel manager.

24 Q. What did you see when you got to the second floor?

25 A. When we proceeded to the second floor, the room of that

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Wong - Direct

1 particular floor was open and we found an unconscious male.

2 Q. I would like to show you now what has been marked for
3 identification as Government Exhibits 212A, B and E.

4 MS. GHOSH: Ms. Dunbar, if you can put those up for
5 the witness, please.

6 Q. Firefighter Wong, do you recognize these three exhibits?

7 A. Yes, I do.

8 Q. What are they?

9 A. Those are pictures of the room where we found the victim.

10 Q. Are they fair and accurate depictions of the room that you
11 entered on October 5, 2017?

12 A. Yes, ma'am.

13 MS. GHOSH: Your Honor, the government offers
14 Government Exhibits 212A, B, and E into evidence.

15 MR. QUIJANO: No objection.

16 THE COURT: 212A, B and E are received.

17 (Government's Exhibits 212A, 212B and 212E received in
18 evidence)

19 MS. GHOSH: Ms. Dunbar, can you please publish 212A
20 for the jury to start with.

21 BY MS. GHOSH:

22 Q. Firefighter Wong, can you describe what view is depicted in
23 this photograph?

24 A. That is the entrance to the room where we found the victim.

25 MS. GHOSH: Ms. Dunbar, if you could put up 212B and

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Wong - Direct

1 publish that for the jury.

2 Q. Firefighter Wong, can you describe what is depicted in this
3 photograph?

4 A. That would be the bed where we found the unconscious male.

5 Q. Using the touchscreen in front of you, can you circle where
6 you found the victim, where he was when you first saw him?

7 A. Yes, ma'am. Give me one moment.

8 MS. GHOSH: Let the record reflect the witness has
9 circled, from the view of the person looking at the photograph,
10 the right side of the bed.

11 THE COURT: Yes.

12 MS. GHOSH: Ms. Dunbar, if you could publish 212E for
13 the jury, please.

14 Q. Firefighter Wong, can you describe what view is depicted in
15 this photograph?

16 A. From the entranceway, if I was standing in front of the bed
17 in the previous picture, that would be to my rear.

18 Q. What did you do first when you arrived at this room?

19 A. When I first arrived in the room, my lieutenant was taking
20 a quick look at the patient. I asked him to move out of the
21 way so I can assess the patient and see what kind of condition
22 he was in.

23 Q. I am going to show you now what has been marked as
24 Government Exhibit 273.

25 MS. GHOSH: Ms. Dunbar, can you put that up for the

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Wong - Direct

1 witness.

2 Q. Did you recognize this individual?

3 A. Yes, I do.

4 Q. Who is it?

5 A. That is the patient that was unconscious on the bed.

6 MS. GHOSH: The government moves to admit Government
7 Exhibit 273.

8 MR. QUIJANO: No objection.

9 THE COURT: 273 is in evidence.

10 (Government's Exhibit 273 received in evidence)

11 MS. GHOSH: Ms. Dunbar, if we can publish that for the
12 jury, please.

13 Q. Firefighter Wong, do you know this individual's name?

14 A. No, I do not.

15 Q. What observations did you make about this individual when
16 you first saw him?

17 A. When I first saw him, he was unresponsive.

18 Q. Can you describe what you mean by him being unresponsive?

19 A. When I finally got the lieutenant out of the way and I
20 began to assess him, I noticed that his breathing was very
21 shallow; his pupils, when I checked him with the flashlight,
22 were pinpointed or dilated. I proceeded to try to pinch the
23 patient on his extremities, his arms and his legs, and I
24 received no response.

25 Q. What, if anything, did you notice about the individual's

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1 pulse?

2 A. When I checked his radial as well as his carotid, they were
3 weak.

4 Q. What do you mean by his radial or carotid?

5 A. The carotid is the large nerve on his neck, as well as his
6 radial which is on his wrist of his arms.

7 Q. You mentioned a moment ago that his pupils were dilated.

8 Can you explain what you mean by that, what the significance of
9 someone's pupils being dilated is?

10 A. Pupils being dilated can show signs of a possible overdose.

11 Q. Based on your training, what is the risk to someone with
12 these symptoms that you mentioned -- the shallow breathing,
13 weak pulse, dilated pupils -- if treatment is not rendered to
14 them?

15 A. If treatment is not rendered to them, they would be
16 deceased.

17 Q. What did you do after determining that this victim was
18 nonresponsive?

19 A. After seeing that he was not responsive, I then proceeded
20 to assemble the naloxone or Narcan kit for distribution.

21 MS. GHOSH: Ms. Dunbar, if you can put up for the
22 witness Government Exhibits 276, 277 and 278.

23 Q. Firefighter Wong, did you just see those three photographs?

24 A. Yes, I did.

25 Q. Do you recognize what they showed?

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1 A. Yes, I do.

2 Q. What is it?

3 A. They are the components of the naloxone, or Narcan kit,
4 that we use for someone suffering from an overdose.

5 MS. GHOSH: Your Honor, the government offers Exhibits
6 276, 277 and 278 into evidence.

7 MR. QUIJANO: No objection.

8 THE COURT: Received in evidence 276, 277 and 278.

9 (Government's Exhibits 276, 277 and 278 received in
10 evidence)

11 MS. GHOSH: Ms. Dunbar, if you could please publish
12 Government Exhibit 276 for the jury.

13 BY MS. GHOSH:

14 Q. Firefighter Wong, can you explain what we see in this
15 photograph?

16 A. That is the vial that contains the medication used for
17 someone that is suffering from an opioid overdose.

18 MS. GHOSH: Ms. Dunbar, if you could publish 278,
19 please.

20 My mistake, if you can go to 277 first.

21 Q. Firefighter Wong, what does this view show?

22 A. That shows the rear part of the vial showing the dosage
23 amounts.

24 MS. GHOSH: Ms. Dunbar, if you could just zoom in on
25 the vials so we can see it a little closer, please.

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1 Q. When you say it shows the dosage amounts, what are you
2 referring to?

3 A. The 0 and 0.5; 1 and 1.5.

4 MS. GHOSH: Now if we could publish Exhibit 278 for
5 the jury.

6 Q. What does this show?

7 A. That shows the actual injection or component that
8 introduces the medication to the patient.

9 Q. Can you explain how this works, the three photographs we
10 have seen, how it all works together?

11 A. Basically, what happens is that the vial gets screwed into
12 this component right here -- I'm just going to circle it for
13 you.

14 MS. GHOSH: Let the record reflect the witness has
15 circled the yellow item on the top of Exhibit 278.

16 THE COURT: Yes.

17 A. That vial then gets screwed on the bottom of that
18 component. Once it's screwed on, then we would place the nasal
19 distribution device, which is this component here, on top of
20 it.

21 MS. GHOSH: Let the record reflect the witness has
22 circled the white object at the bottom of the photo as the
23 nasal distribution device.

24 THE COURT: Yes.

25 A. Once those components are put together, we would then place

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1 it in the patient's nose, one of their nostrils, and proceed to
2 squeeze the plunger or the syringe on it, and they would
3 receive the medication.

4 Q. Let's just step back for a moment. You mentioned Narcan
5 and naloxone. Can you explain what those are?

6 A. Narcan or naloxone is the same. Naloxone is the proper
7 term, but we use Narcan on the job. Basically, what it does is
8 it prevents someone from overdosing. It attaches itself to the
9 mucous membranes in your nose, or the membranes in your nose,
10 and proceeds to stop the reaction that causes an overdose.

11 Q. What kind of overdose is Narcan or naloxone meant to
12 disrupt?

13 A. Products that contain opioids, heroins, things like that.

14 Q. What sort of training have you received on the use of
15 Narcan?

16 A. Narcan is part of our emergency medical service training
17 over at the fire department, EMS academy, or emergency service
18 academy.

19 Q. Does your training include how to recognize when it's
20 necessary to use Narcan?

21 A. Yes, it is.

22 Q. Based on your training and experience, what is your
23 understanding as to why Narcan is used?

24 A. Narcan is used for someone that is suffering from an
25 overdose. It is used to get them out of their overdose so that

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1 they do not, for lack of a better word, die.

2 Q. What is your understanding of what could happen if Narcan
3 is not administered to someone who is overdosing on opioids?

4 A. If it's not introduced to them as soon as possible, that
5 person would be deceased.

6 Q. Turning back now to October 5, 2017, how much Narcan did
7 you first administer to the victim?

8 A. When we first arrived, we proceeded to give the victim
9 point five or a little less than point five milligrams in the
10 vial.

11 Q. Did the victim revive after you gave him the point five
12 milligrams?

13 A. Negative. He was still unresponsive.

14 Q. What did you do next?

15 A. I proceeded to reassess the patient. I saw that there was
16 no change in his condition. So I then proceeded to give him
17 the whole vial.

18 Q. What happened after you administered the rest of the vial
19 of Narcan?

20 A. Within a few minutes, the patient started to come to or
21 become conscious; he opened his eyes.

22 Q. Did there come a time when other responders arrived on the
23 scene?

24 A. Yes, ma'am.

25 Q. Who arrived next?

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1 A. The next parties that arrived were the EMTs, or the
2 emergency medical technicians.

3 Q. What did the EMTs do when they arrived?

4 A. When they first arrived on the scene, I turned to face them
5 and let them know what we had so they can begin assessing the
6 patient.

7 Q. What is the role of EMTs?

8 A. The emergency medical technicians are the next line in
9 regards to our emergency responses. We are considered
10 certified first responders, so our role is to stabilize the
11 patient or to get them stabilized enough so that the emergency
12 medical technicians can start working on them or possibly
13 transport them for emergency purposes.

14 Q. Why does an EMT respond to an incident such as this in
15 addition to someone like you responding?

16 A. They received additional medical training to try to combat
17 the possible signs of overdoses or other emergencies that
18 someone may have.

19 Q. After the EMTs arrived, did any other responders arrive at
20 the scene?

21 A. Yes, ma'am.

22 Q. Who arrived next?

23 A. Next was the next level of our emergency response, that
24 would be the paramedics, as well as the New York Police
25 Department after that.

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1 Q. What is the role of the paramedics?

2 A. The paramedics are, for lack of a better word, they are the
3 last say in regards to emergency responses. They have
4 additional training that both the certified first responders
5 and the EMTs do not have. They are also able to give someone
6 medication or different types of ways to stimulate the body if
7 they are going into cardiac arrest.

8 Q. You mentioned the NYPD arrived as well?

9 A. Yes, ma'am.

10 Q. What is your understanding of why NYPD responds to
11 suspected overdoses?

12 A. NYPD responds basically to oversee and take notes, take
13 control of the, I guess, location that we are in, to make sure
14 that nothing is being moved out of the room, as well as taking
15 notes of who provided what and what order everybody responded.

16 Q. Is it your understanding that it's common procedure for
17 NYPD to respond to overdoses?

18 A. Yes, ma'am.

19 Q. About how long after the victim was revived did you leave
20 the room?

21 A. Approximately 20 to 30 minutes, give or take.

22 Q. Why did you leave then?

23 A. We were advised by the paramedics that we were no longer
24 needed.

25 Q. Other than responding to this incident on October 5, 2017,

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1 did you have any other involvement in this investigation?

2 A. No, I did not.

3 Q. Why does this incident stand out so clearly in your mind?

4 A. It stands out so clearly because that was actually the
5 first time I ever had to administer Narcan to a patient. It
6 was only a matter of months after my graduation, and frankly, I
7 was a little nervous.

8 MS. GHOSH: Just a moment, your Honor.

9 At this time, we would like to read a stipulation into
10 the record. This is Government Exhibit 508, a stipulation
11 concerning fire department records.

12 The stipulation states that:

13 It is agreed between the parties that Government
14 Exhibits 801 through 803 are true and correct copies of records
15 of the New York City Fire Department, relating to an October 5,
16 2017 incident, that were made at or near the time of their
17 creation by, or from information transmitted by, a person with
18 knowledge of the matters set forth in the records, and kept in
19 the course of regularly conducted activity of the New York City
20 Fire Department.

21 Specifically, Government Exhibit 801 is a naloxone
22 usage report.

23 Government Exhibit 802 is a pre-hospital care report
24 summary.

25 Government Exhibit 803 is an incident history report.

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1 The parties agree that Exhibits 801 through 803 are
2 authentic business records of the New York City Fire
3 Department.

4 The parties further agree that this stipulation and
5 Exhibits 801 through 803 may be received into evidence at trial
6 subject to any objections by the defendants on relevance
7 grounds.

8 The government moves to admit Government Exhibits 801,
9 802 and 803.

10 MR. QUIJANO: No objection.

11 THE COURT: 801, 802 and 803 will received in
12 evidence.

13 (Government's Exhibits 801, 802 and 803 received in
14 evidence)

15 MS. GHOSH: We would also move Government Exhibit 508,
16 the stipulation, into evidence.

17 THE COURT: 508 is received in evidence as well.

18 (Government's Exhibit 508 received in evidence)

19 MS. GHOSH: Ms. Dunbar, if you can pull up Exhibit
20 801, please.

21 Could you publish that for the jury.

22 BY MS. GHOSH:

23 Q. Firefighter Wong, do you have that in front of you?

24 A. Yes, I do.

25 Q. This report mentions a Lieutenant Shea on the fourth line

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1 on the upper left?

2 A. Yes.

3 Q. Do you know who that is?

4 A. That was an officer that was covering at the time in my
5 firehouse.

6 Q. Could you read the date that's listed on this report?

7 A. That would be October 5th of 2017.

8 Q. What is the time administered?

9 A. 9:17.

10 THE COURT: A.m. or p.m.?

11 THE WITNESS: That would be a.m., your Honor.

12 MS. GHOSH: The government would now like to read
13 another stipulation concerning hospital records. This is
14 Government Exhibit 502.

15 This stipulation says that:

16 The parties agree that Government Exhibit 901 is a
17 true and correct copy of records of Staten Island University
18 Hospital, located at 475 Seaview Avenue, Staten Island, New
19 York, relating to the October 5, 2017 admission of an
20 individual, that were made at or near the time of their
21 creation by, or from information transmitted by, a person with
22 knowledge of the matters set forth in the records, and were
23 kept in the course of a regularly conducted activity of Staten
24 Island University Hospital.

25 The government offers Government Exhibit 502, the

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1 stipulation, into evidence.

2 MR. QUIJANO: No objection.

3 THE COURT: 502 is in evidence.

4 (Government's Exhibit 502 received in evidence)

5 MS. GHOSH: The government offers Government Exhibit
6 901 into evidence.

7 MR. QUIJANO: No objection.

8 THE COURT: 901 is in evidence.

9 (Government's Exhibit 901 received in evidence)

10 MS. GHOSH: Your Honor, this may be -- I think it's
11 4:30. Should we break, your Honor?

12 THE COURT: Do you have much more for the firefighter?

13 MS. GHOSH: Not much more.

14 THE COURT: Do you have cross-examination?

15 MR. QUIJANO: Yes, your Honor.

16 THE COURT: We will break now.

17 You are excused. You have to come back tomorrow
18 morning at 9:30.

19 THE WITNESS: Thank you, your Honor.

20 THE COURT: Ladies and gentlemen, we are going to
21 break for the day now. We start at 9:30 and finish at 4:30.

22 Please remember my instructions. Don't discuss the
23 case. Keep an open mind. Don't do any independent research.
24 Safe home tonight, and we will see you tomorrow morning at
25 9:30. We will have coffee and tea for you at 9:30.

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(Jury exits courtroom)

THE COURT: Anything to take up?

MR. FINKEL: Just one thing from the government.

The ruling that this Court issued this morning, it's the government's understanding that your Honor's ruling with respect sympathy arguments was predicated on the notion that the defendants would be taking the stand. Obviously, in Ms. Sideris's opening for Mr. Van Manen, it made clear that Mr. Van Manen will be testifying here. Ms. O'Neill's opening, however, introduced a lot of facts that are not going to be in evidence unless Mr. Charlton takes the stand, for example, his loss of a job, the fact that he overdosed, the fact that friends of his overdosed. So we would just like to know whether or not Mr. Charlton is going to take the stand. Otherwise the government has an application to strike sympathy arguments based on this Court's ruling this morning.

THE COURT: Ms. O'Neill.

MS. O'NEILL: If Mr. Charlton does not take the stand, we can strike the parts of the opening, as your Honor ruled earlier this morning.

THE COURT: Do what?

MS. O'NEILL: I understood that your Honor ruled that if the defendants don't testify, that you will be striking our opening statements, portions of them.

THE COURT: Yes.

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1 MS. O'NEILL: OK.

2 THE COURT: So you don't want to advise us now whether
3 Mr. Charlton is going to take the stand or not?

4 MS. O'NEILL: Why would I?

5 MR. FINKEL: Your Honor, when counsel, whether it's
6 the government or defense, makes an opening statement in a
7 federal trial, they have an obligation to argue facts with good
8 faith they believe will be introduced into evidence in this
9 case. You can't have it both ways. You can't a week from now
10 or seven days from now ask the jury to then strike several
11 arguments that they heard seven days ago. If Ms. O'Neill
12 hasn't thought through whether or not Mr. Charlton is going to
13 take the stand, and it appears to the government that he is not
14 going to, and therefore in the morning tomorrow the government
15 asks that Ms. O'Neill's arguments about sympathy be struck.

16 THE COURT: What do you say, Ms. O'Neill?

17 MS. O'NEILL: It's hard to even respond to this.

18 THE COURT: You can't keep on making representations
19 about what you're going to prove contingent upon your client's
20 testifying. It's going to be four or five days by the time you
21 make your decision. In the meantime you have been making all
22 these arguments, leaving in the jury's mind -- this is kind of
23 like something out Trump world, where you keep on talking about
24 what you're going to do, but you never get around to doing it.

25 MS. O'NEILL: But we haven't started our case or

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1 cross-examined any witnesses yet.

2 THE COURT: I will think about this overnight.

3 MR. FINKEL: Thank you, your Honor.

4 MS. FENDER: What time would you like to see the
5 parties tomorrow before the jury resumes?

6 THE COURT: I will be in at 8:30, 9:00.

7 Why don't you get here at 20 after 9.

8 MS. FENDER: Thank you, your Honor.

9 THE COURT: See you in the morning.

10 (Adjourned to May 7, 2019, at 9:20 a.m.)
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LEE WONG	
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Direct By Ms. Ghosh40
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GOVERNMENT EXHIBITS

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27243
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212A, 212B and 212E45
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27347
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276, 277 and 27849
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801, 802 and 80356
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50856
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50258
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90158
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